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No. NSDD 72

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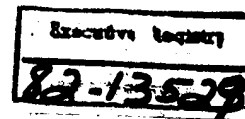
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THE WHITE HOUSE
WASHINGTON



December 13, 1982

MEMORANDUM FOR THE HONORABLE GEORGE P. SHULTZ
THE SECRETARY OF STATE

THE HONORABLE CASPAR W. WEINBERGER
THE SECRETARY OF DEFENSE

THE HONORABLE ANDREW L. LEWIS
THE SECRETARY OF TRANSPORTATION

SUBJECT: NSDD-72 United States Program for the Exercise
of Navigation and Overflight Rights at Sea (C)

Attached for your implementation is the National Security
Decision Directive concerning the program to protect U.S.
navigation, overflight and related security interests in the
seas against excessive maritime claims. (C)

FOR THE PRESIDENT:

William P. Clark

Attachment
NSDD 72

cc: The Director of Central Intelligence
The Chairman, Joint Chiefs of Staff

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December 13, 1982

NATIONAL SECURITY DECISION
DIRECTIVE NUMBER 72**UNITED STATES PROGRAM FOR THE EXERCISE OF NAVIGATION AND
OVERFLIGHT RIGHTS AT SEA (C)**

I have considered agency views and recommendations on the subject program and decided that the United States will continue to protect U.S. navigation, overflight, and related security interests in the seas through the vigorous exercise of its rights against excessive maritime claims. The current uncertainty in the law of the sea and the U.S. decision not to become a party to the Law of the Sea (LOS) Convention make all the more necessary a clear assertion of our rights and a revitalized and more effective navigation and overflight program. Accordingly, I have also decided that the following procedures be instituted immediately to implement this program. (C)

U.S. interests are to be protected against the following categories of excessive maritime claims:

1. Those historic bay/historic water claims not recognized by the United States. (C)
2. Those continental territorial sea baseline claims not drawn in conformance with the LOS Convention. (C)
3. Those territorial seas claims exceeding three miles but not exceeding twelve miles in breadth that:
 - a. overlap straits used for international navigation and do not permit transit passage in conformance with the LOS Convention, including submerged transit of submarines, overflight of military aircraft, and surface transit of warships/naval auxiliaries, without prior notification or authorization; or
 - b. contain requirements for advance notification or authorization for warships/naval auxiliaries of apply discriminatory requirements to such vessels; or

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c. apply special requirements, not recognized by international law, to nuclear-powered warships or to warships/ naval auxiliaries carrying nuclear weapons or specific cargoes. (C)

4. Territorial sea claims in excess of twelve miles. (C)

5. Other claims to jurisdiction over maritime areas in excess of twelve miles, such as exclusive economic zones or security zones, which purport to restrict non-resource related high seas freedoms. (C)

6. Those archipelagic claims that either:

a. are not in conformance with the LOS Convention; or

b. do not permit archipelagic sea lanes passage in conformance with the LOS Convention, including submerged passage of submarines and overflight of military aircraft, and including transit in a manner of deployment consistent with the security of the forces involved. (C)

The current United States juridical position regarding the breadth of the territorial seas and other jurisdictional entitlements will not be changed pending further review. (C)

To ensure that the execution of the program gives appropriate consideration to the possibility of damage to bilateral or other relations, the Department of Defense will plan, and administer the program under the following procedures: (C)

o International straits (paragraph 3.a. above) will be used by both naval ships and aircraft freely and frequently as directed by the Department of Defense. (C)

o The Department of Defense will routinely assert U.S. rights against territorial sea claims and other claims to jurisdiction over maritime areas in excess of twelve miles (paragraphs 4 and 5 above). (C)

o The Department of Defense will submit in advance to the Department of State and the Assistant to the President for National Security Affairs a proposed schedule for asserting U.S. rights against the following categories of excessive claims: territorial sea claims of twelve miles or less which contain special requirements not recognized by international law (paragraphs 3.b. and 3.c. above); archipelagic claims (paragraph 6 above), unrecognized historic claims (paragraph 1 above) and nonconforming baselines (paragraph 2 above). Objections to the schedule by the Department of

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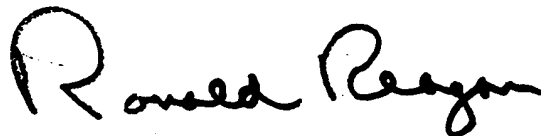
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State will be resolved by the Assistant to the President for National Security Affairs. After a reasonable number of assertions of U.S. rights against an excessive claim in any of these categories, on the recommendations of the Departments of Defense and State, the Assistant to the President for National Security Affairs may determine that advance scheduling to assert rights against these claims will no longer be required. (C)

Except for navigation in and over international straits including their approaches, when any assertion of rights against an excessive claim will result in entry into a politically sensitive area, the planned operation will be reviewed by the Department of State, and the Assistant to the President for National Security Affairs prior to execution by the Department of Defense. The Department of State is responsible for maintaining an up-to-date list of politically sensitive areas. In addition, the Department of State will advise the Department of Defense if any transient political factors in a littoral country which is not a politically sensitive area make it inadvisable for a limited time to conduct an operation under this program. (C)

The Department of State, in conjunction with this program, will continue to protest in diplomatic channels the excessive claims of littoral countries. (C)



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